

VIEWPOINT

Copyright Holders Deserve Protection From Moochers

BY TOM GIOVANETTI

We laugh when we hear "I only read Playboy (or Maxim or FHM or whatever) for the articles," because it's obvious why people buy these magazines. We all know what they're really for, even if they include the occasional restaurant review or Christmas gift suggestion.

A similar argument is being used today to excuse peer-to-peer (P2P) file-sharing services like KaZaa, Grokster and Morpheus.

"File-sharing technology has many beneficial applications" these companies say, even though we all know what they're really for.

Anyone who has spent any time searching through these services understands that the vast majority of material available consists of pirated music, pirated software and (probably pirated) pornography. You can download as much stolen music, stolen software and pornography as your hard drive can hold.

Even worse, the default settings of the software make unknowing users complicit in the unlawful distribution of pirated material.

Jobs Shortage

The problems with massive copyright infringement are well-known. If most people are paying for the creative material they consume, a few can steal while the system functions.

But if a substantial portion of consumers are free-riding on creative material, pretty soon the system breaks down. The venture capitalists (publishers, the recording industry, movie studios and software companies) lose interest, because they are no longer making money.

The result is less new content produced, fewer jobs created and fewer

taxes paid by the content industries.

If we're going to have a system of copyright, it's obvious that those who produce content have the right to defend their intellectual property through the legal system, which they have attempted to do through lawsuits against individual downloaders and lawsuits against services including Napster and Grokster.

Weak Analogy

Even though Grokster has admitted that 90% or more of the files traded using their software is copyrighted and thus being shared illegally, the 9th Circuit Court of Appeals has ruled that companies like Grokster may not be held even partially responsible for piracy committed with its software.

The court's decision fails to distinguish between a legitimate technology and a business model designed to encourage and facilitate illegal activity. But the 9th Circuit judges aren't the only ones mistaken on Grokster.

In The Washington Post last fall, Lawrence Lessig, who has made a career of endorsing the general idea of intellectual property while denying each specific application of it, asserted that holding Grokster liable for piracy committed with its software is like holding gun manufacturers liable for crimes committed with their products.

But Lessig's analogy doesn't hold up.

Firearm technology isn't illegal. Neither is advertising by gun manufacturers. Neither should the file-sharing technology underlying Grokster be illegal. Technology is neutral.

That's also why cable and telecom companies are not (and should not be) liable for infringing material traveling on their networks.

But what if a firearms manufactur-

er invented and aggressively marketed a technology that by its very design seemed specifically designed for committing large-scale crime?

What if the manufacturer encouraged illegal activity and advertised its potential for illegal activity with "Kill all the cops you want — with ease"? Congress would step in quickly, and the courts would act as well.

In fact, they already have, with assault weapons. It may be absurd to compare Grokster with firearms, but it's Lessig's analogy, not mine.

Grokster was clearly designed for the large-scale exchange of music files, and advertised that it can be used to "search, download and share all you want — for free."

At best, Grokster is willfully blind to how its software is being used. Certainly, it is inducing users to break the law. More likely, it is actively complicit in illegal activity.

Almost no one argues that file-sharing software itself should be illegal. The convenience of consumers is an important consideration.

Landmark Case

Grokster users aren't consumers — at least not of online music. They simply steal music, movies and software and then facilitate stealing by others. And all of this theft is facilitated by Grokster.

The stakes are high for holders of intellectual property and for the economy. That's why it's good that the Supreme Court heard the Grokster case Tuesday. The result will be the most important intellectual property case in 20 years, and hopefully will result in workable law that protects the rights of copyright holders while not stifling technological innovation.

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