

Confusing the Captain with the Cabin Boy: The Dangers Posed To Reform of Cyber Piracy Regulation by the Misrepresented Interface between Society, Policy Makers & the Entertainment Industries

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Abstract

Although commentaries regarding intellectual property regulation frequently point out the complexities inherent in its subsistence and reform, the subject is still often discussed in overly simplistic terms of black and white. This paper examines the problems such a view poses, and questions whether a blanket of misunderstanding, or even misdirection, has been used to influence the progression of the regulation in the digital age.

The primary hypothesis is that public perception of the law relating to cyber piracy is out of step with the contemporary de facto legal position.

The definition of cyber piracy is summarised, and the issues relating to confusion surrounding the boundaries or simply considering the myriad categories of piracy as a single topic are discussed. The current law as per the Copyright, Designs and Patents Act 1988 as amended is also outlined for the purpose of evaluating the hypothesis, and the border of cyber piracy in relation to the entertainment industries (concerning film, television and software) is set for the rationale of the analysis.

Further exploration takes place through two case studies which concentrate on DVD piracy. The first regards a marketing campaign which has been mounted by the entertainment industries purporting to, inter alia, raise consumer awareness of cyber piracy law in order to adjust public attitude to the practice toward the negative, and to lobby for tougher IP regulation. It is argued that the campaign falls foul of the dangers of failing to fully identify piracy, and fails to communicate an accurate interpretation of the legal position to the intended audience.

The second case study examines an editorial concerning film piracy in an influential consumer movie magazine. It is submitted that the summation of piracy law and representation of the regulation in general is heavily flawed, and it is questioned whether the bias behind this journalistic failure could be as a result of the influence of lobbies such as those found in the first case study.

The findings of an exploratory study carried out in December 2006 are then presented. In addition to uncovering opportunities for further research, the results indicate that the public are, in many situations, under the impression that criminal sanctions regulating piracy are wider reaching than the current legislation presently provides. It is submitted that the results of the study lend credibility to the notion that influences such as those recognised in the case studies have effectively misrepresented the law to consumers. The danger posed by the possibility that policy makers may be as vulnerable as consumers and perhaps even the press to well-funded and wide-ranging lobbying is considered.

It is concluded that the representation of intellectual property regulation with regards to piracy must be counterbalanced if a truly objective middle-ground can be maintained when considering approaches to reform.